

GILBERT AND BONNIE SOCKWELL

IBLA 90-385

Decided January 21, 1993

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying class I petition for reinstatement of oil and gas lease No. WYW 97848.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

BLM properly denies a petition for class I reinstatement of an oil and gas lease which terminated automatically by operation of law for failure to pay the rental on or before the lease anniversary date where the lessee, having paid the full rental within 20 days following the anniversary date, fails to establish that the failure to timely pay the rental was justified or not due to a lack of reasonable diligence.

APPEARANCES: Gilbert R. and Bonnie K. Sockwell, pro sese.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Gilbert and Bonnie Sockwell have appealed from a May 24, 1990, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying their petition for class I reinstatement of Federal oil and gas lease No. WYW 97848.

BLM issued the original lease, No. W-90607, effective February 1, 1985, and approved an assignment of 40 acres within that lease from Petroleum Research Corporation (PRC) to the Sockwells effective September 1, 1985. The lease created from the lands segregated by this assignment, lease No. WYW 97848, retained the February 1 lease anniversary date. The Sockwells timely paid the rental for the lease each year until February 1990 when the rental due on February 1, 1990, was not received by the Minerals Management Service until February 12, 1990.

By notice dated February 28, 1990, BLM informed the Sockwells that oil and gas lease No. WYW 97848 had automatically terminated by operation of law on February 1, 1990, because the rental payment had not been received on or before the lease anniversary date. BLM advised the Sockwells that they could petition for reinstatement of the lease under 30 U.S.C. § 188(c) (1988) and 43 CFR 3108.2-2 (class I reinstatement) and/or under 30 U.S.C. § 188(d) and (e) (1988) and 43 CFR 3108.2-3 (class II reinstatement).

On March 15, 1990, the Sockwells filed a petition for class I reinstatement of lease No. WYW 97848. Although they enclosed the proper filing fee and additional rental, they offered no explanation for the late rental payment.

By decision dated May 24, 1990, BLM denied the Sockwell's petition for class I reinstatement. BLM found that the Sockwells had not exercised reasonable diligence in making the rental payment because the rental check, which was dated February 8, 1990, was received on February 12, 1990, in an envelope bearing a February 8, 1990, postmark. BLM also noted that the Sockwells had failed to submit a statement of justification for the late rental payment. Since the Sockwells had not submitted a timely petition for class II reinstatement, BLM held that the lease had terminated automatically by operation of law effective February 1, 1990.

On appeal, the Sockwells explain:

We purchased this oil lease from [PRC] for \$ 6,900.00. At that time we were told by them that they would market the lease to an oil company for us. Having not heard from them for some long time, we tried to contact them in January [1990]. The only information we could find was that this company no longer existed. At this point we thought all was lost. We were then told by another oil leasing company whom we had contacted while trying to get information on [PRC], to go on with paying the annual rental payment. This we did as soon as we had the information that this should be done.

The Sockwells contend that the lease and its termination have caused them anxiety and stress, and urge that the lease be reinstated since the payment was received "within the time frame of 15 days which most businesses allow for normal payments."

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1988), provides in part that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." Such lease, however, may be reinstated under section 31(c), 30 U.S.C. § 188(c) (1988), if the rental is paid within 20 days after the anniversary date, upon a showing by the lessee that the failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." See 43 CFR 3108.2-2 (class I reinstatement); Petro-Hunt Corp., 124 IBLA 318, 319 (1992); Denise M. White, 120 IBLA 163, 163-64 (1991); George Foster, 109 IBLA 82, 83 (1989). The lessee has the burden of showing that the failure to timely pay the rental was justified or not due to a lack of reasonable diligence. 43 CFR 3108.2-2(b); see Petro-Hunt, supra at 319-20; George Foster, supra.

Reasonable diligence includes any rental payment postmarked on or before the lease anniversary date. 43 CFR 3108.2-2(a)(2). A lessee has failed to exercise reasonable diligence if the rental payment was mailed

after the lease anniversary date. Petro-Hunt, supra at 320; Denise M. White, supra at 164; George Foster, supra; Ann L. Rose, 92 IBLA 308, 310 (1986), and cases cited therein. Here the Sockwells both wrote and mailed the rental payment on February 8, 1990, well after the February 1, 1990, lease anniversary date. Thus, they have failed to establish that the late rental payment was not due to a lack of reasonable diligence.

Failure to exercise reasonable diligence may be considered justifiable if it is demonstrated that, at or near the lease anniversary date, there existed sufficiently extenuating circumstances outside the lessee's control which affected the lessee's actions in failing to make timely payment. Denise M. White, supra; George Foster, supra; Freedom Oil Co., 87 IBLA 71, 75 (1985). Those circumstances, which must be proximate in time to the lease anniversary date, must also be the causative factor for the failure to exercise reasonable diligence in mailing the late payment. Denise M. White, supra; Joan F. Bechtel, 76 IBLA 1 (1983). Additionally, a lessee must establish that the factors which caused the late payment were beyond its control. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramaco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981), cert. denied, 454 U.S. 1031 (1981); Denise M. White, supra, and cases cited therein. When the failure to pay the rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Denise M. White, supra; George Foster, supra at 84; PRM Exploration Co., 91 IBLA 165, 169 (1986).

In this case, the Sockwells apparently did not timely pay the annual rental due on February 1, 1990, because they believed that "all was lost" when they discovered that PRC no longer existed. Only after they were advised by another oil leasing company that they should continue to pay the annual rental did the Sockwells submit the rental payment due on February 1, 1990. Thus, the Sockwells' failure to timely pay the rental, while based on their mistaken belief that PRC's demise affected the lease, nevertheless represented a conscious choice on their part and was not caused by extenuating circumstances outside their control. We, therefore, find that the Sockwells have not demonstrated that their failure to timely pay the annual rental was justifiable.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

